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**ILLINOIS COMMERCE COMMISSION**

**COMMONWEALTH EDISON  
COMPANY**

**Docket No. 07 – 0540**

**Natural Resources Defense Counsel's  
Brief Regarding Approval of Commonwealth Edison Company's  
Energy Efficiency and Demand Response Plan**

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**Natural Resources Defense Counsel's  
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**I. INTRODUCTION**

The Natural Resources Defense Counsel (NRDC) submits this Brief on the Commonwealth Edison Company's ("ComEd") Energy Efficiency and Demand Response Plan ("Plan") in accordance with the schedule established by the Administrative Law Judge ("ALJ") on November 20, 2007. NRDC is a non-profit membership organization with 1.2 million members and on-line activists nationwide, including 20,000 in Illinois. NRDC is a leader nationally and internationally in establishing and maintaining energy efficiency and other demand-side resources as viable and cost-effective alternatives to conventional supply-side generation resources such as coal and nuclear plants.

ComEd filed its Plan pursuant to recently enacted Public Act 95-0481 ("P.A. 95-0481") which created a new Section 12-103. Section 12-103(f) requires that each electric utility file an Energy Efficiency and Demand-Response Plan with the Illinois Commerce Commission ("Commission") to meet the energy efficiency and demand response goals set forth in the legislation for the period June 1, 2008 through May 31, 2011. In addition to a ruling by the Commission that its Plan meets the statutory energy efficiency and demand response targets, ComEd seeks Commission approval of several Plan elements. (ComEd Ex. 2.0, p. 2.)

NRDC commends ComEd for its thorough and detailed Plan that it produced and filed in a short time period. Furthermore, NRDC applauds ComEd's objective of maximizing the capture of cost-effective energy efficiency and demand response goals, within spending screens, rather than just meeting statutory goals. (ComEd, Ex. 2.0, p. 13.) NRDC strongly supports ComEd's "commitment . . . to be the best in the design and delivery of demand-response programs" rather than just fulfilling its statutory obligations. (ComEd, Ex. 1.0, p. 3.) Overall, ComEd's demand-side portfolio objectives, portfolio analysis process, program design, and regulatory filing are laudable. They reflect an approach that is likely to allow ComEd to achieve its energy savings goals and company objective of transforming Illinois to a cleaner, less energy-intensive state.

NRDC recommends that the Commission rule that ComEd has demonstrated that its Plan meets statutory energy efficiency and demand-response goals. NRDC further recommends that the Commission adopt many, but not all, of the Plan features, as described further below. NRDC also requests that the Commission formally adopt, as a key element of the Plan, the Stakeholder Group.

In addition to a Commission ruling approving ComEd's Plan, NRDC makes three requests:

(1) Statewide Consistency: that the Commission rule that statewide consistency to reduce costs, reduce administrative burdens or improve program performance is Commission policy and consistent with the authorizing statute.

(2) Leverage Existing Programs: that the Commission require ComEd to identify pre-existing programs and assess whether leveraging the pre-existing programs could enhance overall portfolio cost-effectiveness, and

(3) Staff-led Workshops: that the Commission require its Staff to hold one or more workshops to identify additional issues that should be addressed in future proceedings to strengthen the regulatory framework for successful, cost-effective demand-side programs and better achieve ComEd and the State of Illinois' demand-side portfolio goals.

## II. SUMMARY OF POSITIONS

ComEd identifies three Plan elements, and requests that the Commission approve them all. (ComEd Ex. 2.0., p. 1; ComEd Pretrial Memorandum, p. 2.) The Plan elements are that: (1) the proposed portfolio is designed to achieve the savings goals, (2) the corresponding implementation, management and evaluation, measurement and verification plans, and (3) a cost recovery mechanism. (*Id.*) In addition, ComEd requests approval of nine Plan features. (*Id.*) Finally, ComEd describes in considerable detail a stakeholder collaborative process ("Stakeholder Advisory Process" or "Advisory Process"), including the important role of the Stakeholder Advisory Process and how ComEd plans to solicit advice from stakeholders, but does not request Commission approval of the Advisory Process.

In response to ComEd's Plan, NRDC identifies three categories of requests for Commission consideration: 1. Plan elements and features that the Commission should approve as ComEd proposes; 2. Plan elements and features that the Commission should approve, with modification, and 3. A Plan feature that ComEd describes extensively (Stakeholder Group) but does not request Commission approval.

The Commission should approve the following features and elements of ComEd's Plan as proposed by ComEd:

- That ComEd's proposed energy efficiency and demand response is designed to achieve the energy savings goals
- The cost recovery mechanism
- Ability to "bank" excess savings in a given Plan year, and apply the excess to and reduce the subsequent Plan year's goal
- The ability to seek recovery of prudently and reasonably incurred costs that exceed the spending screen in a given year
- Annualized energy savings

The Commission should approve the following two features of ComEd's Plan, with modification:

- **"Deeming" Values:** The Commission should not approve ComEd's proposal for "deeming" measure savings for certain prescriptive measures and program net-to-gross ratios for evaluation purposes at this time. It may be appropriate for the Commission to "deem" values for evaluation at a later point in time after Staff and interested Stakeholders have had more time to review and update the proposed values; and

- **Flexibility to Modify Plan:** ComEd should have flexibility to modify programs and the portfolio, but the Commission should adopt specific rules governing fund shifting and adding or deleting programs.

**Stakeholder Group:** The Commission should explicitly approve the Stakeholder Group that ComEd describes, with the following features:

- Stakeholder Group purpose is to: 1. Provide advice on program design and implementation, and 2. Provide oversight to the EM&V process;
- The Stakeholder Group should have the following features: 1. Statewide-Combined Stakeholder Group, with utility-specific issues handled in small groups, 2. Meeting Format that requires advance notice of issues and materials to be discussed, 3. a Comment Tracking and Response System and 4. a Technical Subcommittee to address technical issues.

NRDC has three additional requests: 1. a Commission ruling on statewide consistency for energy efficiency and demand-response, 2. a Commission ruling that ComEd should identify pre-existing programs and work with parties who are implementing those programs to see if coordinating or leveraging those programs can increase portfolio cost-effectiveness, and 3. a Commission ruling on a Staff-led workshop,

**Statewide Consistency:** The Commission should rule that statewide consistency to reduce costs, reduce administrative burdens or improve program performance is Commission policy and consistent with the authorizing statute.

**Leveraging Existing Programs:** The Commission should require ComEd to identify pre-existing programs, then work with the program implementers to see whether and how leveraging or coordinating with the pre-existing programs can enhance overall portfolio cost-effectiveness.

**Staff-led Workshop:** The Commission should require its Staff to hold one or more workshops to identify additional issues that should be addressed in a future proceeding to develop a robust regulatory framework for oversight of demand-side programs, including:

- Appropriate updated measure savings values for key measures
- Illinois-definition of net-to-gross ratios and appropriate values for IL programs
- Whether and what values should be "deemed" for evaluation purposes
- Financial and accounting rules for EE funds
- Statewide Program Data Tracking and Reporting
- Statewide, Public Cost-Effectiveness Calculator and Inputs
- Common cost definitions and accounting

In this Brief, NRDC does not further address issues, listed above, where it is in agreement with ComEd. Instead, NRDC addresses areas, described above, where it seeks changes or additions to ComEd's Plan.

### III. ARGUMENT

#### A. Deeming Measure Savings and Program Net-to-Gross Ratios For Evaluation Is Premature at this Time

ComEd requests that the Commission "deem" savings values for certain lighting measures, as set forth in Table 5 and program net-to-gross ratios set forth in Table 8. (ComEd Ex. 6.0, pp. 38, 41, 42.) ComEd seeks to have certain values "deemed" for implementation as well as evaluation. (ComEd Ex. 6, p. 36.) "Deeming" values for evaluation means that if an EM&V study, conducted after a program is implemented, showed that a measure savings or net-to-gross ratio was different than what was forecast, the new measure value would not be used to change the forecast.

ComEd witness Mr. **Jensen** defines the term "deemed values" as used in the context of energy efficiency: "to "deem" a value means that parties have agreed or a commission has found, that there is sufficient information regarding the value of a variable that the value can be accepted as the basis for both planning purposes and evaluation." (ComEd Ex. 6.0, p. 36.) Staff witness Mr. **Zuraski** clarified ComEd's request and explains that ComEd's request to "deem" certain measure savings values and the program net-to-gross values raises two issues:

- The partial reliance on values derived NOT from the evaluation of the Company's programs . . . but from external databases and studies performed in other places and at other times;
- The pre-approval of those values . . . in this docket, as opposed to later in future proceedings . . .

(ICC Staff Ex. 1.0, pp. 42-43.)

1. The Commission Should Not Approve Deemed Values Now Given that ICC Staff Could Not Validate the Values

Staff witness Mr. **Zuraski** attempted to review and validate ComEd's energy savings projections. He concluded that: "Some of the inputs are the results of studies performed years ago in distant locations. There has not been enough time to analyze a significant portion of the inputs and independently assess the validity of the source studies." He also stated the "due to the time constraints of this docket, my review of these databases and models has necessarily been cursory . . . hence I cannot vouch for the resulting estimates of program benefits and costs." (ICC Staff Exhibit 1.0, pp. 19 – 20.)

2. ComEd Fails to Demonstrate That Its Proposal To Deem Values Is Consistent With Its Own Witnesses Definition of Deeming

ComEd has failed demonstrate that it has satisfied either of the two conditions that its own witness, Mr. **Jensen**, identifies for deeming values, agreement of the parties or a Commission finding that there is sufficient information about the value of the variable that it can be accepted. (ComEd Ex. 6.0, p. 36.) First, ComEd does not demonstrate that parties have "agreed" to the proposed values. In fact, the only parties who commented on the issue, AG witness Mr. **Mosenthal** and ICC Staff Witness Mr. **Zuraski**, do not support ComEd's deeming proposal. (ICC Staff Ex. 1.0, p. 33.) Mr.

**Mosenthal** supports deeming the gross savings for prescriptive lighting, but "strongly disagrees" that net-to-gross ratios should be deemed. (AG witness, Ex. 1.0, pp. 29 – 30.) Mr. **Mosenthal** states that net-to-gross ratios are very dependent on program design and implementation, can significantly change over time and by area, and that the California values ComEd proposes using are not particularly applicable to Illinois. (AG Witness, Ex. 1.0, pp. 29 – 31.) Second, as described in the section above, the Commission cannot reasonably conclude that there has been "sufficient information about the value of the variable" given that Staff witness stated that he did not have sufficient time to validate the proposed data and studies.

3. ComEd's Proposed Deemed Values, Based on California's DEER Values, Do Not Reflect the Most Current Information

Before adopting ComEd's proposed NTG values from California for lighting measures, the Commission should consider a recent California Assigned Commissioner Ruling that questions the validity of the proposed 0.8 NTG values for lighting. (Assigned Commissioner's Ruling Addressing Net-to-Gross Ratio True-Up and Methodology for Lighting Programs in the 2006 – 2008 Energy Efficiency Portfolios, Rulemaking 06-04-010, mimeo p. 4, dated October 5, 2007) ("Lighting Assigned Commissioner Ruling" or "Lighting ACR"). The Lighting Assigned Commissioner Ruling notes that the California utilities used 0.8 as the default value for lighting measures, but that the NTG ratios from a recent study by the evaluation firm Itron are "significantly lower" than the utility planning assumptions (*Id.*) The Lighting ACR reports that the Itron study concludes that "the NTG ratio across lighting measures is close to 0.62. This NTG ratio is a weighted average of market change and technology NTG estimates that varied from 0.25 for general merchandise big box retailers to 0.97 for discount stores, and from 0.36 for compact fluorescent fixtures to 0.72 for specialty CFLs." (*Id.*) ComEd proposes to "deem" lighting NTG ratios of 0.8. Given that ComEd's witness Mr. **Jensen** reports that lighting is a critical part of ComEd's portfolio savings (ComEd Ex. 6.0, p. 38), it is important to make sure that the proposed numbers reflect the most current information.

Also, before adopting any values for deeming beyond this proceeding, the Commission should ensure that the most current DEER values are being used. The California Public Utilities Commission reports that DEER updates are expected to be completed in early 2008 (for 2008 updates) and early 2009 (for 2009) updates under the direction of the Commission's Energy

Division. (See Proposed Decision of Commission Grueneich and ALJ Gottstein, Rulemaking 06-04-010, Mailed 12/21/2007.)

4. ComEd's Proposed Deemed Values, Based On California's DEER Values, Do Not Reflect Recent Federal Legislation

On December 7, 2007, President Bush signed H.R. 6, The Energy Independence and Security Act of 2007, which requires that common light bulbs will be required to use 25 – 30% less energy than today's most common incandescent bulbs by 2012 - 2014. Before the Commission adopts measure savings values for lighting, it should assess how this sweeping federal legislation will affect net-to-gross ratios for lighting measures, which ComEd witness Mr. **Jensen** indicates are "critical to the portfolio's success." (ComEd Ex. 6.0, p. 38.) One possible impact will be to significantly increase free-ridership, thereby reducing program net-to-gross ratios, as consumers and market actors become aware of and adjust behavior to adapt to the new federal legislation that will make obsolete current light bulbs.

5. Other Jurisdictions Do Revise Values Retrospectively Based On Evaluation Results

ComEd witness Mr. **Hall** reports that "[a]ll of the states of which I am aware used deemed savings to project their program results, and then use evaluations to adjust these values going forward." (ComEd Ex. 6.0, pp. 6-7.) He reports that "Retroactive application of new values would introduce additional uncertainty and risk to the evaluation process. If the independent evaluator later finds that one or more of the deemed measure savings values is inappropriate and provides evidence to support that assertion, the values should certainly be adjusted, but applied prospectively . . ." (*Id.* at p. 7.)

California, where ComEd selected its proposed values for deeming, does in fact retrospectively "true up" both measure savings values and net-to-gross ratios based on evaluation study results. A California Assigned Commissioner Ruling stated that:

Through its decisions and rulings the Commission has historically provided a consistent direction and approach with respect to the treatment of NTG ratios in the evaluation of energy efficiency programs. Namely, in evaluating net benefits (resource savings minus costs) produced by energy efficiency portfolios, NTG ratios would be fully "trued-up" based on ex post study results in the calculation of . . . portfolio net benefits" (Assigned Commissioner's Ruling Addressing Net-to-Gross Ratio True-Up And Methodology for Lighting Programs In the 2006 – 2008 Energy Efficiency Portfolios, mimeo p. 2, dated October 5, 2007.)



The ACR directs the California utilities to "manage their portfolios to minimize this risk" of retrospective true-ups of measure savings and NTG ratios (*Id.*) Given that ComEd looks to California as a model, it should perhaps do the same.

ComEd relied heavily on California values and information to develop its portfolio. Given that California *does* true-up measure savings and NTG values for evaluation retrospectively, Illinois needs to give careful consideration as to whether it should true-up measure savings and NTG ratios retrospectively as well. The Commission does not need to decide whether to deem values for evaluation at this time; it can and should approve ComEd's plan without ruling on whether ComEd's proposed values should be "deemed" for evaluation. NRDC recommends further discussion and evaluation before the Commission deems any measures for evaluation.

6. The Commission Should Not Adopt the Deemed Measure Values and Net-To-Gross Ratios Beyond This Planning Docket Until Staff and Parties Have More Time to Review Values and Information

NRDC agrees with ICC Staff witness Mr. **Zaruska** that "getting the numbers *right* is more important than getting them right away . . . making a judgment now, with a bare minimum of review, is not amenable to getting the numbers right." (ICC Staff Ex. 1.0, p. 44.) NRDC further supports ICC Staff witness Mr. **Zaruska's** to give Staff and interveners "significantly more time . . . to have reviewed this wealth of data and studies and to have determined if some of it is *less* than useful or *less* than sound." (ICC Staff Ex. 1.0, p. 43.) Staff witness Mr. **Zaruska** makes the eminently reasonable suggestion that Staff consider hiring additional personnel or consultants, specializing in energy efficiency program evaluation, to develop Staff's version of the most reasonable and accurate energy efficiency databases. (*Id.*) As part of its regulatory oversight role, NRDC agrees it is appropriate for Staff to independently assess measure savings and net-to-gross ratios, with input from independent consultants it hires and stakeholders, rather than relying on the regulated entity to develop values by which its performance is to be measured.

7. The Commission Should Not Modify the Definition for Net-to-Gross Ratios at this Time

ComEd witness Mr. Jensen recommends "deeming" California net-to-gross ratios (NTG), and also modifying the definition of NTG ratios to include both free rider and spillover effects. (ComEd Ex. 6.0, p. 41.) Spillover effects represent savings attributable to the program for which the program did not have to pay. (*Id.*) NRDC recommends that the Commission not modify the definition of NTG ratios to include spillover effects at

this time because it is not clear that the evaluation budget in Illinois is sufficient to measure yet another program attribute. As ComEd's witness Mr. Jensen points out, "[t]his evaluation budget is very small by current standards in the industry, and is in fact one of the lowest allocations I have seen." (ComEd Ex. 6.0, p. 36.) NRDC recommends that the Commission not modify the definition of NTG ratios to include spillover effects until the Commission staff can assess whether measuring spillover effects is possible or advisable given the limited evaluation budget. The issue of how to define NTG ratios should be deferred to Staff-led workshops or another proceeding.

8. The Commission Should Develop Deemed Values for Measure Savings and Net-to-Gross Ratios Through Staff-led Workshops  
NRDC recommends that the Commission order Staff to convene one or more workshops to review and provide input on "deeming" as well as other issues described further below.

**B. Granting ComEd Unlimited Flexibility To Modify its Portfolio and Programs Renders Commission Approval of the Plan Meaningless. Instead, the Commission Should Grant ComEd Flexibility Within Constraints**

ComEd requests broad flexibility to modify its Plan after Commission approval. ComEd witness Mr. Brandt requests Commission approval for "flexibility to modify program design and budgets and to add or discontinue programs." (ComEd Ex. 2.0, p. 2.) ComEd proposes to discuss the following portfolio changes with the Advisory Group: 1. Reallocating funds which results in any program budget change greater than 20%, 2. Discontinuing approved programs, and 3. Adding new programs. (ComEd Ex. 1.0, p. 15.) NRDC supports flexibility to respond to market conditions within certain Commission-established guidelines. However, the Commission Plan approval is meaningless if the flexibility is unlimited. (NRDC Ex. 1.0, p. 8.)

NRDC recommends that the Commission adopt specific guidelines on what program and portfolio changes are appropriate without seeking Commission approval, and what changes require notice and comment to the Stakeholder Group, then approval by Commission staff to ensure that the resulting portfolio after the changes is consistent with the enabling statute and other Commission policy. The Commission flexibility guidelines should cover at least the following topics: shifting budgets between programs which results in program budget changes of greater than 20%, and adding or deleting programs.

**C. The Commission Should Approve the Stakeholder Group, Including Specific Elements Set Forth Below**

ComEd has expressed commitment to continued engagement with stakeholders to provide opportunities to review portfolio progress, and also to contribute to the "continued development and strengthening of the portfolio." (ComEd, Ex. 1.0, p. 27.) Throughout its Plan, ComEd describes a broad, comprehensive role for the Stakeholder Group and assigns to it several important responsibilities, including:

- **Reviewing Final Program Designs:** ComEd expects to present and receive Stakeholder Group input on final program designs by June 1, 2008 (ComEd, Ex. 1.0, p. 27.);
- **Establishing Performance Metrics:** Establishing agreed-upon performance metrics for measuring program performance; (*Id.*)
- **Reviewing Plan Progress Against Metrics:** Providing a process for reviewing program performance against the metrics and making recommendations to modify or adjust program designs or implementation plans; (*Id.*)
- **Reviewing Plan Progress Towards Achieving Goals:** Reviewing ComEd's progress towards achieving the required energy efficiency and demand response goals (ComEd Ex. 2.0, p. 37.)
- **Developing Reporting Form and Frequency:** Working out frequency and nature of reporting (ComEd Ex. 9.0, p. 13.)
- **Reviewing Program Budget Shifts:** Reviewing reallocation of funds between programs where the change in budget for any specific program is more than 20% (ComEd. Ex. 2.0, p. 38.)
- **Reviewing Program Additions or Discontinuations:** Reviewing discontinuation or addition of new programs (*Id.*)
- **Developing an Evaluation Protocol** (ComEd, Ex. 2.0, p. 37.)
- **Advising on EM&V RFP Design:** Advising on the design on the request-for-proposal ("RFP") process for independent evaluation services (ComEd, Ex. 2.0, p. 12.)
- **Assisting with EM&V Contractor Selection:** Assisting with the selection of an Evaluation, Measurement and Verification (EM&V) contractor (*Id.*)
- **Reviewing EM&V Contractor Dismissal:** Reviewing ComEd's dismissal of an evaluation contractor under the terms of the contracts signed with that contractor, and the hiring of a new contractor (ComEd Ex. 2.0, p. 38.)
- **Reviewing New Proposed Programs for the Next Program Cycle:** Supporting the review of program options for inclusion in the next three-year Plan (ComEd Ex. 1.0, p. 27.)
- **Advising on Program and EM&V Issues:** Advising on issues related to program implementation and EM&V (ComEd Ex. 2.0, p. 38.)

ComEd provides some detail on how it plans to operate the Stakeholder Group, including facilitation by an independent, third party organization or individual accepted by all parties, an initial meeting to establish basic principles of operation, a series of meetings through the spring, then quarterly meetings thereafter (ComEd Ex. 1.0, p. 27.)

NRDC supports ComEd's proposal to have an important and meaningful role for the Stakeholder Group to review portfolio progress, and to contribute to the "continued development and strengthening of the portfolio." (See ComEd, Ex. 1.0, p. 27.) To ensure that the process promotes purposeful, effective and thoughtful Stakeholder Group input that maximizes the value of the energy efficiency and demand-side portfolio, NRDC identified several process elements that the Commission should adopt, including: 1. a statewide combined Stakeholder Group; 2. Meeting Format to include advance notice of issues and materials, and 3. Comment Tracking and Reporting System. (NRDC Ex. 1.0, pp. 5). NRDC also supports ELPC's recommendation for a Technical Subcommittee to address technical issues, as needed. Each of these process elements is described further below:

- Statewide Combined Stakeholder Group: the Stakeholder Group should include all three portfolio administrators, ComEd, Ameren and DCEO. A separate process for each administrator creates needless administrative expense. Utility-specific issues can be addressed through utility-specific subgroups;
- Meeting Format: A meeting agenda and all meeting materials shall be circulated to Stakeholders at least five (5) business days before the meeting to allow meaningful review and comment by stakeholders. Facilitators shall offer a polycam and web-based broadcast system to allow remote Stakeholder Group member participation to reduce costs of participating;
- Comment Tracking and Response System: After each meeting, the meeting facilitator shall summarize issues raised, proposed action items and stakeholder questions. The meeting facilitator should work with the utilities and DCEO to respond to all items and identify which items caused the administrators to modify its portfolio or programs. The purpose of the Comment Tracking and Response System is to demonstrate whether and how Stakeholder Group input resulted in meaningful discussion, change and improved portfolio and program performance.
- NRDC developed other suggestions for the Stakeholder Group process, described in Attachment A of NRDC's direct testimony, for consideration during the initial meeting of the collaborative in February 2008 that will establish basic principles of operation. (See ComEd Ex. 1.0, p. 27.)

Several parties expressed support for NRDC's Stakeholder Group process recommendations have received widespread support (City of Chicago, Ex. 1.0, p. 5.; ELPC Ex. 1.0, pp. 4).

- Technical Assistance: NRDC supports ELPC's recommendation that the Stakeholder group facilitator should provide technical expertise, and that the Stakeholder Group process should include a technical working group to address technical issues, as needed. (ELPC Ex. 1.0, p. 4.) Examples of technical issues that might be delegated to a technical working group might include developing specifications for a public cost-effectiveness calculator that stakeholders could use to develop program ideas.
- **The Commission should direct the ComEd/DCEO-stakeholder working group to submit periodic reports for the Commission's consideration during the annual reconciliation proceedings required under 220 ILCS 12-103(e) and (f)(6).**

Despite ComEd's extensive list of responsibilities envisioned for the Stakeholder Group related to monitoring portfolio progress, providing oversight to the independent EM&V process and maximizing the value of the demand-side portfolio, in addition to widespread support from intervenors for continued stakeholder input, ComEd witness Brandt clarifies in rebuttal that ComEd is "not seeking Commission approval of a collaborative process in this docket." (ComEd Ex. 9.0, p. 12.) ComEd further notes that "Section 12-103 makes no mention of a stakeholder advisory group or collaborative process." (*Id.*)

ComEd's assertion that the Commission should not approve the Stakeholder Group because Section 12-103 does not specifically mention a stakeholder advisory group or collaborative process should be rejected. ComEd's position that the Commission does not need to approve the Stakeholder Group is inconsistent its position on several other issues. For example, ComEd seeks approval for broad flexibility to make changes after Commission approval of its Plan, the ability to bank savings and annualize energy savings, and the ability to "deem" measure savings and net-to-gross ratios even though these issues are not required or even addressed in the enabling statute. Furthermore, although a Stakeholder Group is not mentioned in the statute, the Stakeholder Group's role and purpose, as listed in considerable detail throughout ComEd's Plan, is directly relevant to several statutory requirements set forth in Section 12-103(f), including on-going monitoring of whether the programs will achieve the energy savings and demand targets listed in the statute (Section 12-103(f)(1)); portfolio cost-effectiveness (Section 12-103(f)(5)) and annual independence of the portfolio performance (Section 12-103(f)(7)). Since the Stakeholder Group process, even as described in ComEd's plan, is integral to improving the portfolio, monitoring portfolio progress, and independent evaluation, measurement and verification (EM&V) the Commisison should explicitly adopt it.

In addition to approving the Stakeholder Group, the Commission should adopt clear objectives for the group and NRDC's proposed process elements to ensure that the Stakeholder Group participation is meaningful and valuable. NRDC and other intervenors want process elements adopted to ensure the time they will devote to the providing review and comment on the many issues set forth in ComEd's plan is time well spent. NRDC does not want to devote the substantive time and resources it will take to participate in the Stakeholder Group unless ComEd gives thoughtful consideration to NRDC's input, and is willing to make changes to the portfolio and programs where the suggestions are sound. NRDC believes the process elements it has proposed, and other intervenors have endorsed, will help ensure the ComEd provides the opportunity for meaningful engagement by stakeholders, and then thoughtfully considers suggestions that are made.

**D. The Commission Should Adopt A Policy of Statewide Consistency Where Such Consistency Reduces Costs, Reduces Administrative Burdens or Improves Program Performance**

Several intervenors commented on the need for and value of statewide consistency and coordination for various elements of the Energy Efficiency and Demand Response Plans. For example, NRDC recommends development of a statewide, public cost-effectiveness Total Resource Cost (TRC) calculator and inputs and statewide program data tracking and reporting (NRDC Ex. 1.0, pp. 7-8.) ELPC witness Mr. **Crandall** recommends consideration of a unified brand and marketing campaign supported by ComEd, Ameren and DCEO similar to California's Flex Your Power campaign and Wisconsin's Focus on Energy. (ELPC Ex. 1.0, p. 6). The City of Chicago's witness Mr. **Abolt** recommends identifying and leveraging existing programs to "extend the reach of programs included in its Plan and to reduce its non-implementation costs." (City Ex. 1.0, pp. 4-5.) AG witness Mr. **Mosenthal's** testimony underscores the need for "effective coordination between three program administrators and multiple implementation contractors" (AG Ex. 1.0, p. 4.) In addition, AG witness Mr. **Mosenthal** recommends that the utilities and DCEO "work to resolve any program differences and offer consistent statewide programs." (AG Ex. 1.0, p. 14.) AG witness Mr. **Mosenthal** clearly and succinctly articulates why program consistency is important:

Markets do not neatly separate by utility territory. As a result, offering different incentive levels for the same products, having different incentive levels for the same products, having different rules about minimum qualifying efficiency or installation practices, etc. will create confusion in the market for trade allies, vendors, design professionals and customers with facilities in more than one utility territory. (*Id.*)

Statewide consistency does not conflict with Section 12-103(f) which merely states that the utility's plans shall "tak[e] into account the unique circumstances of the utility's service territory." The plain reading of the statute does not bar either voluntary coordination or a state policy on statewide consistency where such consistency makes sense. It only requires that the Plans should take into account unique circumstances of each utility's service territory. In fact, the utilities have already demonstrated the value of

and some level of commitment to statewide consistency in the Plan development process as they used the same contractor and process to evaluate measure cost-effectiveness and assemble a portfolio of programs. If the utilities had not coordinated on the portfolio development process, evaluating the Plans would have involved significantly more time and resources. Coordination and consistency between ComEd, Ameren and DCEO should continue through finalizing Program plan details, program implementation and evaluation, development of common tools, and the Stakeholder Group process.

The Commission should adopt a policy of statewide consistency in Energy Efficiency and Demand-Response Plan design, administration and implementation and evaluation where such consistency reduces costs, reduces administrative burden or improves program performance, while permitting utility-specific Plan elements when needed to take into account the unique circumstances of each utility's service territory. Furthermore, the Commission should rule that when utilities present final program designs to the Stakeholder Group for review and comment before the June 1, 2008 Plan start date, they shall identify all programs and program features that are statewide consistent. For programs and program features that are not consistent, utilities shall identify how the differences result from unique circumstances of the utility's service territory.

**E. The Commission Should Require ComEd to Identify Pre-Existing Programs, Then Assess Whether Coordinating Or Leveraging Those Programs Can Improve Portfolio Cost-Effectiveness Or Otherwise Improve the Portfolio**

The City of Chicago described a broad array of existing programs that promote energy efficiency that currently operate in Chicago with a budget of 6.2 million dollars in fiscal year 2007. (City Ex. 1.0, pp. 3-8.) City's witness Mr. Abolt testified that "coordinating with existing programs . . . has the potential to both extend the reach of ComEd's efficiency plan and reduce the cost of program implementation." (*Id.* at p. 2.) Given that there is not a public cost-effectiveness calculator that parties can use to evaluate the merits of suggested program ideas, and the very short time-frame for this proceeding, the City has not had the opportunity to evaluate how its programs might be used to reduce ComEd's portfolio cost-effectiveness or other benefit ComEd's Plan.

ComEd should be required to identify pre-existing programs and work with the implementers, such as the City of Chicago, to assess whether coordinating with the programs could improve portfolio cost-effectiveness, or extend the reach of the measures ComEd is proposing, or otherwise improve ComEd's portfolio performance, consistent with ComEd's goals.

**F. The Commission Should Order Staff-Led Workshops to Identify and Develop a Robust Regulatory Framework to Foster Demand-Side Program Success**

For the demand-side portfolio to become a reliable resource and replace conventional supply, effective government oversight of the portfolio is necessary to ensure that the reporting savings are real, costs are minimized, and that the Plan achieves other state policy objectives as set forth in the enabling statute. A robust

regulatory framework also promotes accountability, transparency and consistency, will help maximize available cost-effective savings.

Intervenors identified some elements of effective government oversight that should be further developed, with more time for Staff and intervenor review and input, including:

- **Appropriate Measure Savings Values** (ICC Staff Ex. 1.0, pp. 43 – 44.)
- **Appropriate Net-to-Gross Ratios for IL** (ICC Staff Ex. 1.0, pp. 43-44.)
- **Financial and Accounting Rules for EE Funds:** Proper financial tracking of ratepayer funded activities, including financial controls and an accounting system (ELPC Ex. 1.0, p. 5)
- **Financial Compliance Audit:** Commission end-of-year compliance audit (by staff or independent auditor under ICC direction) (*Id.*)
- **Statewide Program Data Tracking and Reporting** – a common data set and reporting format will ease the burden on ICC staff and other interested parties and lower data tracking and reporting. (NRDC Ex. 1.0, p. 8.)
- **Statewide, Public Cost-Effectiveness Calculator and Inputs** – a public tool is important to allow ICC staff, program implementers and interested stakeholders to evaluate prospective programs for cost-effectiveness, monitor cost-effectiveness as the programs and portfolios are implemented. (NRDC, Ex. 1.0, p. 7.)

NRDC requests that the Commission direct Staff to convene a workshop that solicits comments from interested stakeholders on what elements of effective government oversight need to be further developed and the appropriate procedural vehicle for developing an effective regulatory framework for the demand-side portfolio, such as a rulemaking. The workshop content and agenda should also reflect recommendations from the recent Midwestern Governor's Association 2007 Energy Summit on the demand-side portfolio.

#### IV. CONCLUSION AND REQUESTS

NRDC acknowledges and appreciates the ComEd's tremendous effort, over a very short period of time, to develop a detailed and thorough Energy Efficiency and Demand-Response Plan designed to achieve the aggressive energy efficiency and demand-response goals. NRDC looks forward to working with ComEd and other intervenors to achieve ComEd's goal of maximizing benefits to ratepayers of these programs.

ComEd requests that the Commission approve ComEd's Plan, with the following additions and modifications:



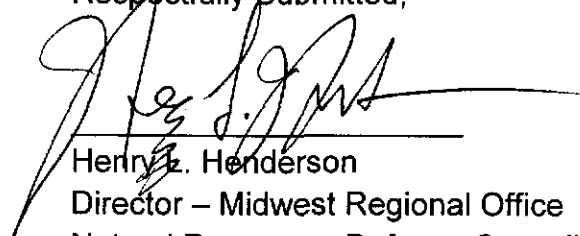
1. The Commission should not adopt ComEd's proposed measure savings values or net-to-gross ratios for post-program performance evaluation at this time, as such values may be outdated and Staff and parties have not had an adequate time to review them.
2. The Commission should not modify the definition of net-to-gross ratios to include spillover effects at this time. The Commission instead should defer consideration of how to define NTG ratios and whether the evaluation budget is sufficient to measure spillover effects to a future proceeding or Staff-led workshop.
3. The Commission should not grant utilities or DCEO unlimited flexibility to modify programs and the portfolio because Commission approval of the Plans is meaningless if utilities have unlimited flexibility to modify the Plans after Commission approval. The Commission ruling should address the process for review and approval of proposed budget shifts between programs and proposals to add or delete programs, providing necessary public oversight and discipline to the development and implementation of the Plans.
4. The Commission should adopt a statewide Stakeholder Group as an important and integral part of the Plans. The purpose of the Stakeholder Group shall include, but is not limited to:
  - a. Providing advice on program design and implementation, and
  - b. Providing oversight to the independent EM&V process.
5. In addition, the Commission should adopt the following process elements to promote purposeful, effective and thoughtful Stakeholder Group input to help maximize the value of the energy efficiency and demand-side portfolio:
  - a. Statewide Combined Stakeholder Group: the Stakeholder Group should include all three portfolio administrators, ComEd, Ameren and DCEO. A separate process for each administrator creates needless administrative expense. Utility-specific issues can be addressed through utility-specific subgroups;
  - b. Meeting Format: A meeting agenda and all meeting materials shall be circulated to Stakeholders at least five (5) business days before the meeting to allow meaningful review and comment by stakeholders, and assure that the meetings allow for meaningful input and thoughtful response by ComEd. Facilitators shall offer a polycom and web-based broadcast system to allow remote Stakeholder Group member participation to reduce costs of participating;
  - c. Comment Tracking and Response System: After each meeting, the meeting facilitator shall summarize issues raised, proposed action items and stakeholder questions. The meeting facilitator should work with the utilities and DCEO to respond to all items and identify which items caused the administrators to modify its portfolio or programs. The purpose of the Comment Tracking and Response System is to demonstrate whether and how Stakeholder Group input resulted in meaningful discussion, change and improved portfolio and program performance; and

- d. Stakeholder Group Technical Subcommittee: The Stakeholder Group should include a technical subcommittee that can evaluate and make recommendations on technical issues that may improve portfolio and program performance, as needed.
6. The Commission should rule that Commission policy is for statewide consistency in Energy Efficiency and Demand Response Plan design, administration and implementation where such consistency reduces costs, reduces administrative burden or improve program performance, while permitting utility-specific Plan elements when needed to take into account the unique circumstances of each utility's service territory.
7. When utilities present final program designs to the Stakeholder Group for review and comment before the June 1, 2008 Plan start date, they shall identify all programs and program features that are statewide consistent. For programs and program features that are not consistent, utilities shall identify how the differences result from unique circumstances of the utility's service territory.
8. The Commission should order ComEd to identify pre-existing programs, such as those operated by the City of Chicago, and work with the entities implementing pre-existing programs to determine whether coordinating with pre-existing programs can increase the cost-effectiveness of the portfolio.
9. The Commission shall order staff to hold one or more workshops to solicit input on the appropriate regulatory framework for energy efficiency and demand response programs. The workshops should solicit comment on the following issues, plus others that staff and parties raise: appropriate updated measures savings values for key measures, Illinois definition of net-to-gross ratios and appropriate values for Illinois; whether and what values should be "deemed" for evaluation purposes, financial and accounting rules for EE funds, statewide program data tracking and reporting, statewide public cost-effectiveness calculator and inputs, common cost definitions and accounting.

Dated:

January 14, 2008

Respectfully Submitted,



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**State Of Illinois  
ILLINOIS COMMERCE COMMISSION**

**COMMONWEALTH EDISON  
COMPANY**

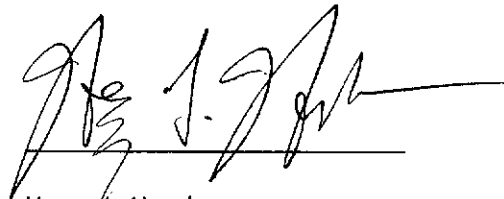
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**Docket No. 07 – 0540**

**NOTICE OF FILING**

To: Service List

Please take notice that on January 14, 2008, I caused to be sent to Elizabeth A. Rolando, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois, 62701, by U.S. Postal Service, the Natural Resource Defense Council's Brief Regarding Approval of Commonwealth Edison Company's Energy Efficiency and Demand Response Plan in the captioned proceeding.

Dated: January 14, 2008



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**State Of Illinois  
ILLINOIS COMMERCE COMMISSION**

**COMMONWEALTH EDISON  
COMPANY**

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**Docket No. 07 – 0540**

**CERTIFICATE OF SERVICE**

I, Henry L. Henderson, hereby certify that a copy of the Natural Resource Defense Council's Brief Regarding Approval of Commonwealth Edison Company's Energy Efficiency and Demand Response Plan in the above captioned docket, was electronically served upon the parties listed in the Service List for this docket, in accordance with the Rules of Practice of the Illinois Commerce Commission.

Dated: January 14, 2008



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